



F.No.GEN/CB/199/2024-CBS/NCH

Date: 11.06.2024

DIN No. 202406770000051515B

ORDER No. 21/2024-25

**UNDER REGULATION 16 OF THE CUSTOMS BROKER LICENSING
REGULATION, 2018**

M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F), having address at Office No. 701, Ruturaj CHS, Pendse Nagar, Cross Road, Dombivali, Thane, Maharashtra-421201, (hereinafter referred as the Customs Broker/CB) is holder of Customs Broker License No. 11/2640 (PAN NO. ABACS8742F), issued by the Commissioner of Customs, Mumbai under Regulation 7(2)(b) of the CBLR, 2018, and as such they are bound by the regulations and conditions stipulated therein.

2. An Offence Report in the form of Show Cause Notice No. 40/ADC/ADJ(X)/2022-23/ACC dated 30.03.2024, issued by ADC, Export, ACC, Mumbai Customs Zone-III was received by CBS, NCH, wherein inter-alia following were informed:

2.1. M/s. Kotal Enterprises (IEC No. BHTPK2839Q) (hereinafter referred to as "the exporter") having declared address in IEC as Room No. 10, New Indra Nagar, Near Sudarshan Colony, Thane (East), Maharashtra-400603, had filed three Shipping Bills No. 9254160, 9254271 & 9254283 all dated 27.03.2022 (hereinafter mentioned "The Subject Shipping Bills"), through their Customs Broker M/s Saraimx Logistics Pvt. Ltd (hereinafter referred to as "the C.B.") for export of Readymade Garments, having total declared FOB value of Rs. 85,95,360/- (Rupees eighty five lakh ninety five thousand three hundred sixty only), under the drawback/LUT scheme for the claim of drawback of Rs.1,89,098/- (Rupees one lakh eighty nine thousand ninety eight only) and RoSCTL of Rs. 5,20,018/- (Rupees five lakh twenty thousand eighteen only).

2.2. On the basis of risk analysis, the NCTC, Mumbai had informed to SIIB Export, ACC, vide their email dated 29.03.2022 that M/s Kotal Enterprises (IEC No. BHTPK2839Q) had filed 07 risky S/b's dated 27.03.2022 & 28.03.2022 at INBOM4 i.e Air Cargo Complex, Mumbai Zone-III for Risky Commodity i.e Readymade Garments (RMGs). The NCTC, Mumbai further informed that the exporter appears to have no supply chain pertaining to the RITC of these items

registration recently and had shown sudden spurt in their business activities in recent months; the exporter appeared to be a front man with meagre financial resources; one out of two L1 suppliers on record, M/s Ram Traders, had NIL inward supply; The RITC of the goods supplied to exporter by M/s Ajay Sales (L1 supplier) falls under Chapter 62; however, as per the inward supply chain, the suppliers of M/s. Ajay Sales had no inward for HSN 62, this L2 was only dealing in Scrap falling under Chapter 72 indicating paper-based book transaction. M/s Advanta Sales (L2 Supplier), who was the only supplier of M/s Ajay Sales, had 'Cancelled' their GST registration. The exporter M/s Kotal Enterprises had carted the goods for the three S/b's no. 9254160, 9254271 & 9254283 all dated 27.03.2022.

2.4. Accordingly, the consignments under three SBs 9254160, 9254271 & 9254283 all dated 27.03.2022 were put on hold and the consignment was examined 100% under supervision of SIIB(X), ACC, Mumbai under panchanma dated 04.04.2022 and the goods were found as per declaration in Shipping Bills/check list in respect of quantity and descriptions. Respective sealed Samples of the goods were drawn for further investigation/testing and for valuation purpose.

2.5. As the exporter had not submitted any proof of genuineness of supply chain, accordingly goods were seized under section 110(1) of the Customs Act, 1962 and seizure memo dated 25.04.2022 was issued. Samples of the goods covered under the above three S/b's were forwarded to DYCC, ACC, Mumbai vide letter dated 11.05.2022 with request to provide the composition, nature and correct description of the goods. Test report in respect of the above goods was received from New Customs Laboratory Mumbai through DYCC, ACC, Mumbai on 05.06.2022.

2.6. A letter dated 19.04.2022 was received from the exporter M/s Kotal Enterprises with request to provisionally release the goods under the Shipping Bills No. 9254160, 9254271 & 9254283 all dated 27.03.2022. Further, the goods covered under the above said three S/Bs were provisionally released by export shed, ACC, Mumbai-III on execution of a Bond of Rs. 85,95,360/- (Eighty-five lakh ninety-five thousand three hundred sixty only) and a Bank Guarantee of Rs. 3,54,558/- (Three lakh fifty-four thousand five hundred fifty-eight only) (B.G No. BOM/0151/60414111046/2022-23 dt. 30.04.2022).

2.7. A letter dated 07.06.2022 addressed to Addl. Commissioner, CGST & C.Ex, Navi Mumbai was issued to verify the genuineness of the exporter and their

2.8. An email letter dated 08.12.2022 along with enclosure letter dt. 10.09.2022 was received from Joint Commissioner, CGST & C.Ex, (Anti Evasion) Navi Mumbai informing that effort were made to verify the registered premises of M/s Kotal Enterprises under authorization for inspection issued under Section 67(1) of the CGST Act, 2017, However, the registered premises could not be located and appears to be non-existent. Further, on verification from the GSTN portal it is observed that the taxpayer has filed NIL GSTR-1 returns after obtaining GST registration on 20.02.2022. It was further stated that in view of these, it appears taxpayer is non-genuine and for safeguarding govt. revenue actions such as GST Registration cancellation & bank attachment process has been initiated by GST & C.Ex, Navi Mumbai.

2.9 Officer of the SIIB(X), ACC, Mumbai visited the registered office address of M/s Kotal Enterprises i.e Room No. 10, New Indra Nagar, Near Sudarshan Colony, Thane (East), Maharashtra, on 19.09.2022 and as per visit report dated 19.09.2022 the said address was found false/incomplete/non-existent. Accordingly, a letter dated 18.12.2022 addressed to the Director General, DGFT, Maulana Azad Road, New Delhi with request to cancel the IEC No. BHTPK2839Q of M/s Kotal Enterprises, was issued by SIIB, Export.

2.10. The Bank Account No. 60409363420 of the exporter M/s Kotal Enterprises was provisionally attached u/s 110(5) of the Customs Act, 1962, on 30.11.2022 for the safeguard of revenue of Government exchequer with the approval of Competent authority.

2.11. A letter dated 07.06.2022 addressed to Addl. Commissioner, CGST & Service Tax, Delhi West, Bhikaji Cama Place, New Delhi was issued to verify the genuineness of the business along with ITC of M/s Ajay Sales (GSTIN No. 07FSEPK2741B1Z3) (L1 Supplier of exporter M/s Kotal Enterprises). In reply vide email letter dated 27.11.2022 received from CGST, Delhi West through NCTC, Mumbai, it was informed that M/s Ajay Sales (L1 Supplier of exporter M/s Kotal Enterprises) found non-existent and GSTIN registration has been suspended of the said supplier.

2.12. Statement of Shri Vishal Gupta, CEO of CB firm M/s Saraimx Logistic Pvt. Ltd. was recorded on 04.10.2022 in the office of SIIB(X), ACC under Section 108 of Customs Act, 1962 wherein he inter-alia stated that:

- He is working as CEO of M/s Saraimx Logistics Pvt. Ltd and he handles the business of firm.

proprietor Mr. Anand Kotal through a whatsapp group of Customs Broker and Forwarders.

- It was the first consignment that he had taken for clearance of M/s Kotal Enterprises.
- He had verified all KYC documents and address of exporter M/s Kotal Enterprises.
- He further stated that M/s. Kotal Enterprises is a merchant exports firm which deals in Garments. Transport was arranged by exporter only.
- In response to a question – “One Officer of SIIB(X)/ACC, Mumbai, visited the address of Mr. Anand Kotal, Proprietor of M/s Kotal Enterprises, but no such address was found”, he stated that address was verified by him, it might be, he changed his address. He would confirm the new address of Mr. Anand Kotal and will provide to this office.

2.13. Further statement of the Shri Vishal Gupta, CEO of C. B firm M/s Saraimx Logistic Pvt. Ltd. was recorded on 11.04.2023 in the office of SIIB(X), ACC under Section 108 of Customs Act, 1962 wherein he inter-alia stated that:

- M/s Saraimx Logistic Pvt. Ltd is a C.B firm as well as logistics company and there are three (03) directors namely i). Shri Amar Powale ii). Shri Samir Gharat and iii). Shri Ramesh Gupta. He works in this company in the position of CEO and looks after Custom Clearance and freight forwarding related works.
- On being asked how much they charged for filing a single S/b, Mr. Vishal stated that they charge approx Rs 2000-3000 as agency fee for filing/clearance of a single S/b which depend upon the number of S/b filed in a month for the exporter.
- On being asked whether they provide logistics service to exporter, Mr. Vishal Gupta stated that they provide logistics service to the party.
- They do not have any warehouse for the storage of goods.
- On being asked whether they had verified the address of exporter M/s. Kotal enterprises, in his reply Mr. Vishal stated that office address of M/s. Kotal Enterprises was verified by one of his employee Mr. Anil Kamble.

regard.

- On being asked that one of SIIB(X) officer visited the address of exporter M/s Kotal enterprises on 19.09.2022 i.e. Room No 10, New Indira Ngar, Near Sudarshan Colony, Thane East, Maharashtra and it was found that the said address is non-existent, in this regard Mr. Vishal stated that he has no idea.

- Again when countered that in his earlier statement dated 04.10.2022 recorded in this office, Mr. Vishal Gupta stated that the said address verification was carried out by him but now he is saying it was carried out by Mr. Anil Kamble, in his reply Mr. Vishal stated that in his previous statement, address verification was carried out by him means it was carried out by his employee.

- On showing his earlier statement recorded on 04.10.2022 where Mr. Vishal deposed that exporter may have changed his address and he made a promise that he will submit the new one after confirming from M/s Kotal Enterprises, Mr. Gupta stated that they are trying to communicate with the exporter but no response is being received from the exporter side. They tried to call several times but nobody picks up call. So they could not ascertain the new address of the exporter.

- On being asked whether they understand as Customs Broker it is their obligation as mentioned in CBLR, 2018 to verify the correctness of address of his client at the declared address by using reliable, independent, authentic documents, data or information. It is also their responsibility to maintain all records and accounts that are required to be maintained under these regulations and preserved for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose. Since they could not provide any proof of address verification, it appears that the same was not carried out by their C.B firm, in his reply Mr. Vishal Gupta stated that the address verification was carried out by one of their employee Mr. Anil Kamble when the clearance work of M/s Kotal Enterprises was taken by their C.B firm but it comes to their notice at the time of last statement dt. 04.10.2022 recorded by SIIB(X), ACC that the address of M/s Kotal Enterprises is non-existent, since then they are trying to communicate with Mr. Anand Kotal, proprietor of M/s Kotat Enterprises but he is not responding to their calls

investigation, summons was issued on 17.11.2022 and 23.01.2023 on which nobody appeared and from this it appears that they are not cooperating with the investigation, in this regard, Mr. Vishal Gupta stated that he was suffering from fever so could not attend previous summons.

- On being asked what was the mode of payment between their C.B firm and exporter, Mr. Gupta stated that all payment was made through online banking. Mr. Vishal also submitted bank account statement of company (M/s Saraimx Logistics Pvt. Ltd.) for one year as well as ledger of Exporter as well as IATA agent.

- On being asked about the status of payment made by exporter M/s Kotal Enterprises to M/s Saraimx Logistics Pvt. Ltd in respect of S/Bs filed by them at ACC, Mumbai, in this regard, Mr. Vishal Gupta stated that exporter M/s Kotal Enterprises has paid Rs. 5,90,440/- (Rupees five lakh ninety thousand four hundred forty only) to them till date i.e as on 11.04.2023 but this amount was due for the previous consignment cleared at JNPT, Nhava Sheva. Mr. Gupta further stated that in respect of the three (03) S/Bs which was filed/cleared at ACC, Mumbai-III on behalf of M/s Kotal Enterprises, an amount of Rs. 9,48,806/- (Rupees nine lakh forty-eight thousand eight hundred six only) was paid by them (M/s Saraimx Logistics Pvt. Ltd.) to IATA for booking of freight and as on this amount is due/yet to be received from exporter M/s Kotal Enterprises.

- On being asked that as RMG is risky commodity and consignments were destined to Sudan which is a sensitive country. Whether they tried to verify/know the origin of goods or supplier of Exporter, Mr. Vishal Gupta stated that being a Customs Broker, they did not try to verify/know the origin of the goods or exporter's suppliers.

2.14. Statement of Mr. Abdul Rauf Abdul Lafit Shaikh, authorized person of M/ s. Kotal Enterprises (BHTPK2839Q) recorded on 17.10.2022 under Section 108 of the Customs Act, 1962 at the office of SIIB(X), ACC, Sahar, Andheri (East), Mumbai, in his statement Mr. Abdul Rauf Abdul Latif Shaikh inter alia stated that;

- He works with M/s Kotal Enterprises.
- On being asked his role in M/s Kotal Enterprises, Mr. Abdul Shaikh stated that he assists Mr. Anand Kotal proprietor of M/s Kotal Enterprises in his business. He further stated that he contacts the party for business.

that these S/Bs were filed by C.B M/s Saraimx Logistics Pvt. Ltd on behalf of M/s Kotal Enterprises.

- On being asked from whom exported goods were purchased, Mr. Abdul stated that the goods were purchased from one M/s Ajay Sales.
- On being asked about the payment mode between M/s Kotal Enterprises and M/s Ajay Sales, Mr. Abdul stated that goods were purchased on credit.
- On being asked whether they have received the remittance from the foreign buyer, Mr. Abdul stated that the payment is yet to be received from consignee; however, they are in touch with their foreign buyer in respect of remittance.
- On being asked who arranged the transport for carrying goods from supplier/warehouse to ACC, Mumbai, Mr. Abdul stated that it was arranged by them.
- On asked for the receipt of goods, delivery challan, toll slips/transporter challan, e-way bill etc, Mr. Abdul stated that right now, he is not carrying the delivery challan, toll slips/transporter challan etc. He will check it in his office and will submit accordingly and he further informed that e-way bill has already been submitted by them.
- On showing the data of GST of the Exporter and as per data the exporter has NIL local outward supply in domestic market before starting the business of exports, in this regard, Mr. Abdul stated that before starting the export, they used to deal in garments in local market.
- On being asked how they came in contact with their foreign buyer, Mr. Abdul stated that they came in contact with the foreign buyer through one of their acquaintance.
- On being asked that one of SIIB(X) officer visited the address of Mr. Anand Kotal, Proprietor of M/s Kotal Enterprises on 19.09.2022 but no such address was found, in this regard, Mr. Abdul Rauf Abdul Lafit Shaikh stated that the office address is same as mentioned in IEC but Mr. Kotal are residing at a new address "1/6 Jai Ambika Niwas, Garibachwada, Phulerd on rent and he submitted the light bill for the proof.

2.15. In furtherance of investigation, the scrutiny of Bank Statement of M/s Kotal Enterprises bearing Account No. 60409363420 of the Bank of Maharashtra, Kopari Branch Thane, Maharashtra was undertaken and it was

through NEFT from SIBN, CBEC ICEGATE and on 31.05.2022 an amount of Rs. 2,16,119/- was also credited through NEFT from SIBN, CBEC ICEGATE. These amounts, which were credited from CBEC ICEGATE appears to be Govt. transferred/Incentive/refund of Drawback, IGST & RoSCLT etc and immediately on 01.06.2022 an amount of Rs. 5,90,440/-(Rupees five lakh ninety thousand four hundred forty only) was transferred from account of M/s Kotal Enterprises to the account of C.B firm M/s Saraimx Logistics Pvt. Ltd through cheque no. 090458.

2.16. Further, the Bank statement of C.B firm M/s Saraimx Logistics Pvt. Ltd was scrutinized from 01.06.2022 to 31.10.2022 and it was observed that the statement consists of a lot of transactions between M/s Saraimx Logistics Pvt. Ltd and bank/logistics/exporter importer etc including the transaction of Rs. 5,90,440/- which was made from M/s Kotal Enterprises on 01.06.2022.

2.17. The Role of Exporter:

I. On departmental enquiry, it was found that the premises of M/s. Kotal Enterprises having address at Room No. 10, New Indra Nagar, Near Sudarshan Colony, Thane (East), Maharashtra-400603 was found false/incomplete/non-existent. The CGST & C.Ex. (Anti Evasion) Navi Mumbai vide their letter 10.09.2022 has also submitted that effort were made to verify the registered premises of M/s Kotal Enterprises under authorization for inspection issued under Section 67(1) of the CGST Act, 2017, however, the registered premises could not be located and appeared to be non-existent and further submitted that on verification from the GSTN portal it was observed that the taxpayer had filed NIL GSTR-1 returns after obtaining GST registration on 20.02.2022, and hence, it appeared that the taxpayer was non-genuine and for safeguarding govt. revenue actions such as GST Registration cancellation & bank attachment process was initiated by their office.

II. Further, several summons were issued to the proprietor of M/s Kotal Enterprises at the address of the firm and/or at address as mentioned in Aadhar card No. 7456 1705 7345 of Mr. Anand Kotal which were not honoured by the exporter M/s Kotal Enterprises. Hence, it appears that the Exporter has nothing to present in his defense and deliberately tried to avoid appearing before Customs Authority to record his statement and thus not co-operating with the investigation. Therefore, it appears that the firm was created only on paper with sole intention of defrauding the Govt. exchequer by fraudulently claiming/existing export incentives including

exporter M/s Kotal Enterprises) found non-existent and GSTIN registration was suspended of the said supplier.

III. Further, in spite of providing ample opportunities vide issuing various summons, the Exporter did not submit the Proof of receipt of goods, Lorry Receipts, E-Way Bills for transporting of goods, Proof of payment made to the Suppliers. The Exporter failed to produce any document to prove the genuineness of their business transactions. Therefore, it appears that the exported goods were purchased from non-registered suppliers and no statutory duty was paid/levied by their suppliers to the Government Exchequer. Thus, the non-duty paid goods clearly indicates the complete mis-match of the exporter's supply chain. The Exporter did not submit any Foreign Remittance copy of the exported goods. It clearly implies that the exporter has purchased the goods from unregistered local suppliers and raised fake invoices to clear the shipments to avail undue export incentives and attempted to defraud the Government and thereby acted in a manner which rendered the goods mentioned under three Shipping bills i.e. 9254160, 9254271 & 9254283 all dated 27.03.2022 having total FOB value of Rs 85,95,360/- (Rupees eighty five lakh ninety five thousand three hundred sixty only), liable for confiscation under Section 113(i) & 113(ia) of the Customs Act, 1962.

IV. Further, Mr. Abdul Shaikh, the authorized representative of M/s Kotal Enterprises in his statement recorded on 17.10.2022 submitted that the export goods were purchased from one, M/s Ajay Sales on credit and on being asked the proof of the same he stated that he would check the receipt of the goods, delivery challan, Toll slips/transporter challan, e-way bill etc, in his office and would submit accordingly, however the same was not submitted by him. Further, he submitted that the foreign remittance with respect to the subject Shipping Bills were yet to be received from their foreign buyer and they are in touch with their foreign buyer in respect of remittance. In respect to the NIL local outward supply of exporter in the domestic market as per GST return data, he stated that, before starting the business of exports, they used to deal in garment in local market. The above acts of omission and commission by Mr. Anand Kotal proprietor of M/s Kotal Enterprises resulted in violation of provisions of Section 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 11 of the Foreign

the instant case, it is observed that Rule 18(1) of Customs and Central Excise Duties Drawback Rules, 2017 read with proviso to Section 75(1) of the Customs Act, 1962 provides for the mechanism for recovery of unrealized exports proceeds, if the same has not been realized under the period prescribed or permitted extended period under the Foreign Exchange Management Act (FEMA), 1999. It is noticed that in case of non-realization of exports proceeds, it is deemed that the same has never been allowed therefore the same is required to be recovered by pressing into operation aforesaid Rule 18 of the Customs and Central Excise Duties Drawback Rules, 2017. It is also clear that no statutory duty was levied on the purchase of the exported goods by the Exporter, as the exporter has failed to provide the documentary evidence and the supplier of exporter was also found non-existing during the investigation and it appears that same were procured from Local Unregistered Suppliers. Therefore, the claimed RoSCTL amount of Rs. 5,20,018/- (Rupees five lakh twenty thousand eighteen only) for the goods covered under Shipping Bills no. 9254160, 9254271 & 9254283 all dated 27.03.2022 are liable for rejection under provisions of para 5 of Notification No. 77/2021-Customs(N.T.) dated 24.09.2021 read with Section 28AAA of Customs Act, 1962 as the export realization has not yet been received. In view of the above, it appears that the export firm M/s Kotal Enterprises was created on paper with sole intention to defraud the Govt. exchequer.

2.18 Role of the Customs Broker: During investigation, the registered office of exporter was verified by SIIB(X), ACC, Mumbai and it was found that the office of M/s Kotal Enterprises does not-exist and the same was also informed by the jurisdictional GST Commissionerate. That effort was made to verify the registered premises of M/s Kotal Enterprises under authorization for inspection issued under Section 67(1) of the CGST Act, 2017. However, the registered premises could not be located and appeared to be non-existent. Further, on verification from the GSTN portal it was also observed that the taxpayer had filed NIL GSTR-1 returns after obtaining GST registration on 20.02.2022, hence, it appears that the taxpayer is non-genuine. In view of these, it appears the firm is non-existent at the registered address. Therefore, it appears that the submission of CEO of Customs Broker M/s Saraimx Logistics Pvt. Ltd, namely Vishal Gupta, in his statement dated 04.10.2022 & 11.04.2023 that they have verified the premises of M/s Kotal Enterprises, appeared to be incorrect and false. Hence, it appears that they tried to mislead the investigation. Thus, the CB did not verify the

credentials of the exporter. It appears that the CB aided, abetted and connived with Mr. Anand Balram Kotal in effecting fraudulent exports through M/s Kotal Enterprises for availing ineligible export incentives. The above act of omissions and commissions by the Customs Broker has resulted in contravention of the provisions of Regulation 10(d),10(e)& 10(n) of the CBLR, 2018, and 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1)of the Foreign Trade (Development And Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 17 & 18 of the Customs and Central Excise Duties Drawback Rules, 2017, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. The failure of CB to verify the credentials of the exporter has resulted in violation of Regulation 10(n) of the CBLR, 2018.

2.19. Comparative Analysis of the Bank Statements of M/s Kotal Enterprises and the CB, M/s Saraimx Logistics Pvt. Ltd reveals the following: The Bank account of M/s Kotal Enterprises was opened on 24.02.2022 by depositing Rs 6,000/- (by cash) in Bank of Maharashtra, Kopari Branch Thane, Maharashtra. On 30.05.2022 an amount of Rs. 2,14,591/-, Rs. 2,13,938/-, Rs. 1,82,687/- Rs. 1,75,472/-, Rs. 1,64,109/- Rs. 1,77,542/- & Rs. 1,68,398/- was credited in a/c of M/s Kotal Enterprises through NEFT from SIBN, CBEC ICEGATE and on 31.05.2022 an amount of Rs. 2,16,119/- was also credited through NEFT from SIBN, CBEC ICEGATE. These amounts which were credited from CBEC ICEGATE appears to be Govt. transferred/Incentive/refund of Drawback, IGST & RoSCLT etc and immediately on 01.06.2022 an amount of Rs. 5,90,440/-(Rupees five lakh ninety thousand four hundred forty only) was transferred from account of M/s Kotal Enterprises to account of C.B firm M/s. Saraimx Logistics Pvt. Ltd through cheque no. 090458. Further, Mr. Vishal Gupta, CEO of C.B firm M/s Saraimx Logistics Pvt. Ltd in his statement dated 11.04.2023 has deposed that an amount of Rs. 9,48,806/-(Rupees nine lakh forty-eight thousand eight hundred and six only) was paid by their firm to IATA agent for the booking of freight with respect to goods covered under S/bs no. 9254160, 9254271 & 9254283 all dated 27.03.2022. Mr. Vishal Gupta, further deposed that the amount Rs. 5,90,440/- which was transferred to their C.B firm's account from the exporter was toward the due from the previous consignment cleared at JNPT, Nhava-Sheva. As pertains to S/bs no. 9254160, 9254271 & 9254283 all dated 27.03.2022, amount of Rs. 9,48,806/- is still due.

The Bank statement of C.B firm M/s Saraimx Logistics Pvt. Ltd was scrutinized from 01.06.2022 to 31.10.2022 and it was observed that the

export is the CB firm, M/s Saraimx Logistics Pvt. Ltd.

3. From the facts of the case, it appears that the CB, M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F), has failed to comply with the provisions of Regulation 10 (d), 10(e) and 10 (n) of CBLR, 2018.

Legal Provisions of the CBLR, 2018: -

Regulation 10 (d) of the CBLR, 2018:- “A Customs broker shall advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;”

Regulation 10 (e) of the CBLR, 2018:- “A Customs broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;”

Regulation 10 (n) of the CBLR, 2018:- “A Customs broker shall verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;”

3.1 From the Offence Report, it is noticed that the exporter did not submit the Proof of receipt of goods, Lorry Receipts, E-Way Bills for transporting of goods, Proof of payment made to the Suppliers before the Investigative Agency and failed to produce any document to prove the genuineness of their business transactions. Therefore, it appeared that the export goods were purchased from non-registered suppliers and no statutory duty was paid/levied by their suppliers to the Government Exchequer. Thus, the non-duty paid goods clearly indicates the complete mis-match of the exporter's supply chain. The Exporter did not submit any Foreign Remittance copy of the exported goods. It clearly implies that the Exporter had purchased the goods from unregistered local suppliers and raised fake invoices to clear the shipments to avail undue export incentives and attempted to defraud the Government.

Therefore, it appeared that the exporter with the help of the CB, exported the goods with mala-fide intention to avail undue drawback & other export benefits like ROSCTL/RODTEP and availment of wrongful ITC credit in violation of 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the

Central Excise Duties Drawback Rules, 2017, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015.

In the instant case, the CB appears to have failed in advising his client to comply with the above mentioned provisions of the Customs Act, 1962 and other Allied Acts before effecting the export. Moreover, the CB also failed to bring the matter of such non-compliance to the Deputy Commissioner or Assistant Commissioner of Customs. Therefore, it appears that the CB failed to comply with the provisions of Regulation 10 (d) of CBLR, 2018.

3.2 The Customs Broker (CB) is an agent authorized by the exporter to work on their behalf. It is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information he imparts to a client with reference to any work related to clearance of cargo. From the Offence Report, it is noticed that the Bank Statement of the CB had a lot of transactions with the bank/logistics/exporter importer etc. including the transaction of Rs. 5,90,440/- which was made from M/s Kotal Enterprises on 01.06.2022. Surprisingly, such amount which were credited from CBEC ICEGATE in the account of the exporter, appeared to be Govt. transferred/Incentive/refund of Drawback, IGST & RoSCLT etc to the exporter and immediately on 01.06.2022 the same amount of Rs. 5,90,440/-(Rupees five lakh ninety thousand four hundred forty only) was transferred from account of M/s Kotal Enterprises to account of CB firm M/s. Saraimx Logistics Pvt. Ltd through Cheque No. 090458. Therefore, it appeared that the CB instead of being diligent in their duty as entrusted in Regulation 10 (e) of CBLR, 2018 appears to be the de-facto beneficiary of the subject export. Therefore, it appears that the CB failed to comply with the provisions of Regulation 10 (e) of CBLR, 2018.

3.3 From the Offence Report, it is noticed that the office of the Exporter, M/s Kotal Enterprises did not-exist and the same was also informed by the jurisdictional GST Commissionerate, that the registered premises could not be located and appeared to be non-existent. Further, on verification from the GSTN portal, it was also observed that the taxpayer had filed NIL GSTR-1 returns after obtaining GST registration on 20.02.2022, hence, it appeared that the taxpayer was non-genuine. In view of the foregoing, it appeared that the firm was non-existent at the registered address. Such an outcome of the investigation is in absolute contradiction with the statements dated 04.10.2022 & 11.04.2023 of Shri Vishal Gupta, CEO of M/s. Saraimx Logistics recorded under Section 108

Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information; Whereas, the CB in their statement dated 04.10.2022 & 11.04.2023 has submitted that they had verified the premises as mentioned in IEC of the exporter, however, on departmental enquiry the address of the exporter was found to be fictitious/non-existent/false. Therefore, it appears that the CB failed to comply with the duty mandated in Regulation 10 (n) of CBLR, 2018.

3.4 In view of the above facts, the CB License held by M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F) was suspended by the Pr. Commissioner of Customs (General) vide Order No. 07/2024-25 dated 18.04.2024 and personal hearing was granted to the CB on 25.04.2024. However, the CB requested for conducting PH on 27.05.2024 and the same was accorded.

4. WRITTEN SUBMISSION OF THE CB: In response to the said Suspension Order, the CB M/s. Saraimx Logistics Pvt. Ltd. submitted their reply dated 25.05.2024, wherein inter-alia, following has been submitted:

(i) Their employee Mr. Vishal Gupta had verified all the KYC documents i.e. Exporter's Pan Card having Pan Card No. BHTPK2839Q, Aadhar Card of the Exporter Shri. Anand Balram Kotal having Aadhar Card No. 7456 1705 7345, Bank of Maharashtra, Kopri Branch, Thane letter dated 02.03.2022 written to Dy. Commissioner of Customs, EDI Export Department, ACC, Andheri West with regard to AD Code Letter certifying the exporter's address and mentioning the Current A/c No. 60409363420 of the exporting firm with its IFSC Code MAHB0000151, Udyam Registration Certificate, Income Tax Return Acknowledgement for the Assessment Year 2021-22 for the exporting firm and GST Registration Certificate under Form GST REG-06 of the exporter. It was further submitted that since they had done their job with due diligence while collecting the KYC documents before filing of the shipping bills therefore, their CB firm had not violated the provisions of the CBLR, 2018.

(ii) With regard to the supply chain of the said exporter of the subject goods they were not aware of any such suppliers, M/s. Ram Traders and M/s. Ajay Sales and neither had any relation with them in any manner nor they interacted with them.

(iii) The Exporter had not provided the supply chain documents of subject goods to them, which may be because they might have purchased the subject

turnover of Rs. 40,00,000/- for filing of return with GST paid duty. Hence keeping in view of above facts the allegation leveled against them that they had not seen their supply chain document is unwarranted and absurd in law.

(iv) Based on the Examination Report under Panchanama dated 04.04.2022 as well as the Test Reports dated 25.05.2022 of the DYCC, it was clear that the Exporter had not mis-declared the subject goods, neither for description nor for the quantity.

(v) On the basis of the Market Enquires conducted by the investigation, it was concluded that the market price of the subject goods was found little higher than the declared price by the exporter.

(vi) With regard to the question raised by the investigating officer about an entry of Rs. 5,90,440/-, it was submitted that the said amount was in respect of the 03 shipping bills charges which were filed and cleared at ACC, Sahar, Mumbai-III and it also included the pending charges for their previous consignments cleared at JNPT of the said exporter and the charges of IATA for booking of air freight.

5. RECORD OF PERSONAL HEARING OF THE CB: - In pursuance to regulation 16(2) of the CBLR, 2018, opportunity of personal hearing was granted to the CB, M/s Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F) on 25.04.2024 at 12.00 noon. However, the CB requested for conducting PH on 27.05.2024 and the same was accorded. Subsequently, Shri K.C. Kala (Consultant) authorized representative of the CB, Shri Jagdish Bagad Maurya, Director and Shri Amar Powale, Director appeared for PH on 27.05.2024. They reiterated their written submission submitted vide letter dated 25.05.2024.

DISCUSSION AND FINDINGS

6.1 I have carefully gone through the records of the case, the written submissions submitted by the Customs Broker and the submissions made during the personal hearing. The facts of the case and finding of investigation have been mentioned in above Paras and are not being repeated for brevity.

6.2 The issues to be decided in the instant case is whether the suspension Order No. 07/2024-25 dated 18.04.2024 is required to be continued or revoked.

6.3 The CB in his defence submitted that they were neither aware of the supply chain of the said exporter of the subject goods nor had any relation with any

and failed to produce any document to prove the genuineness of their business transactions. Therefore, it appeared that the export goods were purchased from non-registered suppliers and no statutory duty was paid by their suppliers to the Government Exchequer. Thus, the non-duty paid goods clearly indicated the complete mis-match of the exporter's supply chain. Moreover, it has also been noticed from the Offence Report that the Exporter did not submit any Foreign Remittance copy of the exported goods. In view of the foregoing, it clearly implied that the Exporter had purchased the goods from unregistered local suppliers and raised fake invoices to clear the shipments to avail undue export incentives and attempted to defraud the Government.

Therefore, it appeared that the exporter, exported the goods with mala-fide intention to avail undue drawback & other export benefits like ROSCTL/RODTEP and availment of wrongful ITC credit in violation of 50(2), 50(3) & 75(1) of the Customs Act, 1962 read with Section 11(1) of the Foreign Trade (Development And Regulation) Act, 1992, Section 7(1) & 8 of the Foreign Exchange Management Act, 1999, Rule 17 & 18 of the Customs and Central Excise Duties Drawback Rules, 2017, Rule 11 of the Foreign Trade (Regulations) Rules, 1993 and Regulation 9 of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. The CB's role was to ensure the compliance of procedures in case of drawback but the CB failed to carry out any measure to ensure no fraudulent activities are conducted. The CB on the contrary submitted that they were not aware of the supply chain of the Exporter. Therefore, it appears that the CB failed to comply with the provisions of Regulation 10 (d) of CBLR, 2018.

6.4 The CB in his defence submitted that the amount of Rs. 5,90,440/-, which was received by them from the Exporter was in respect of the charges of the 03 shipping bills, previous consignments cleared at JNPT of the said exporter and the charges of IATA for booking of air freight. However, as observed from the Offence Report, the Bank Statement of the CB had a lot of transactions with the bank/logistics/exporter importer etc. including the transaction of Rs. 5,90,440/- which was made from M/s Kotal Enterprises on 01.06.2022. The said amount was credited from CBEC ICEGATE in the account of the exporter, which was Govt. transferred/Incentive/refund of Drawback, IGST & RoSCLT etc to the exporter and immediately on 01.06.2022 the said exact amount of Rs. 5,90,440/-(Rupees five lakh ninety thousand four hundred forty only) was transferred from account of M/s Kotal Enterprises to the account of CB firm M/s. Saraimx Logistics Pvt. Ltd. In view of the foregoing, it is observed that the

moment, the Exporter receives the undue export incentives, the same gets transferred to the account of the CB immediately, shows that the CB is the actual beneficiary of the fraudulently obtained export incentives. Therefore, it appears that the CB instead of being diligent in their duty as entrusted in Regulation 10 (e) of CBLR, 2018 went one step further and appeared to be the de-facto beneficiary of the subject export. Therefore, it appears that the CB failed to comply with the provisions of Regulation 10 (e) of CBLR, 2018.

6.5 The CB in their defence submitted that their employee had verified all the KYC documents of the Exporter. Moreover, the CB in their statements dated 04.10.2022 & 11.04.2023 also submitted that they had verified the premises as mentioned in IEC of the exporter. However, it is observed from the Offence Report that the office of the Exporter, M/s Kotal Enterprises did not-exist at the registered address and the same was also corroborated by the report of jurisdictional GST Commissionerate. Further, it was also noticed that as per the GSTN portal, the taxpayer had filed NIL GSTR-1 returns after obtaining GST registration on 20.02.2022, hence, it appeared that the taxpayer was non-genuine. In view of the foregoing, it appears that the firm was non-existent at the registered address. Such an outcome of the investigation is in absolute contradiction with the statements dated 04.10.2022 & 11.04.2023 of Shri Vishal Gupta, CEO of M/s. Saraimx Logistics recorded under Section 108 of Customs Act, 1962, wherein they submitted that they had verified the premises of the Exporter. Hence, it appears that the CB tried to mislead the investigation. The CB failed to verify the credentials of the exporter as the findings of the investigation shows that the ultimate beneficiary of the fraudulently obtained export incentives was the CB themselves. Therefore, it appears that the CB failed to comply with the duty mandated in Regulation 10 (n) of CBLR, 2018 as the Exporter was not existing at the registered address and it appeared that the firm was created only on paper with sole intention of defrauding the government exchequer by fraudulently claiming/availing export incentives.

6.6 I observe that the CB has a very important role in customs clearances and lot of trust has been placed by the Department on the CB. In regime of trade facilitation and with more and more of the goods being facilitated by the Risk Management Systems without examination by the Customs, the role of CB has further increased so that economic frontiers of the country are well guarded. In this regard, I rely on the judgement of the Hon'ble Supreme Court in case of Commissioner of Customs Vs M/s K.M. Ganatra & Co has held that: -

The CHAs supposed to safeguard the interests of both the importers and the customs. A lot of trust is kept in CHA by the importers/exporters as well as by the government agencies...”

6.7 Further, I rely on the judgement of the Hon'ble High Court of Madras in case of Cappithan Agencies vs Commissioner Of Customs, Chennai-VIII, 2015 (326) E.L.T. 150 (Mad.), has held that:

“...Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such a position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.”

6.8 In view of the discussion held above, I have no doubt that the suspension of the CB licence vide Order No. 07/2024-25 dated 18.04.2024 under Regulation 16 of the CBLR, 2018 was just and proper. The said regulation reads as: -

“16. Suspension of license. - (1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the

7. From the above facts, prima-facie, the Customs Broker M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F) appeared to have failed to fulfil their obligations under Regulation 10(d), 10(e) & 10(n) of CBLR, 2018 and contravened the same. Therefore, for their acts of omission and commission as above, the CB M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F) appeared liable and guilty. Hence, all the charges sustain for the time being and are reasonable grounds for continuation of the order of suspension.

8. Accordingly, I pass the following order: -

ORDER

- I. I, Principal Commissioner of Customs (General), in exercise of powers conferred upon me under the provisions of Regulation 16(2) of CBLR, 2018 order that the suspension of the Customs Broker License of M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F) ordered vide Order No. 07/2024-25 dated 18.04.2024 shall, continue pending inquiry proceedings under Regulation 17 of CBLR, 2018.
- II. This order is being issued without prejudice to any other action that may be taken or purported to be taken against the CB or any other person(s)/firm(s) etc. under the provisions of the Customs Act, 1962 and Rules/Regulations framed there under or under any other law for the time being in force.


11/6/24

(SUNIL JAIN)
Principal Commissioner of Customs (G)
NCH, Mumbai - I

To,

M/s. Saraimx Logistics Pvt. Ltd. CB No. 11/2640 (PAN NO. ABACS8742F),
Office No. 701, Raturaj CHS, Pendse Nagar,
Cross Road, Dombivali, Thane, Maharashtra-421201.

3. The Commissioner of Customs, Mumbai I, II, III Zone
4. EDI of NCH, ACC & JNCH
5. Bombay Custom House Agent Association
6. Office copy
7. Notice Board